87- 1588
No.

Supreme Court, U.S.
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OCTOBER TERM 1987

IN THE SUPREME COURT

OF THE UNITED STATES

FRANK BORING FITZGERALD,	)
APPELLANT,	)
vs.	)
STATE OF MONTANA, DEPARTMENT	)
OF FAMILY SERVICES,	)
GENE HUNTINGTON, DIRECTOR	)
RESPONDENT. 1/	)

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF MONTANA 2/

APPENDICES PART 1 OF 2 PARTS

APPEARANCE: FRANK BORING FITZGERALD
3000 HALLOWELL LN
BILLINGS, MT 59101
406-259-5866
APPELLANT, PRO SE

1/ FORMERLY DEPT. SOCIAL & REHABILITATIVE SERVICES, DAVE LEWIS, DIRECTOR.

2/ CASE BELOW, 86-538, IN RE: MGM, YOUTH IN NEED OF CARE. 741 P2 770.

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APPENDIX A (Typed Copy)

No. 86-538

IN THE SUPREME COURT OF THE STATE OF MONTANA

1987

IN THE MATTER OF M.G.M.
Youth in Need of Care.

APPEAL FROM: District Court of the 13th Judicial District, In and for the County of Yellowstone, The Honorable William Speare, presiding.

COUNSEL OF RECORD:

For Appellant: Ralph L. Herriott, Billings, Montana
For Respondent: Hon. Mike Greely, Attorney General, Helena, Montana
Harold Hanser, County Attorney, Billings, Montana
Greg Muyllowney, Deputy County Atty., Billings, Montana
Damon Gannett, Guardian Ad Litem, Billings, Montana

Submitted on Briefs: July 1, 1987

Decided: August 20, 1987

Filed: Aug 20 1987

(Signature) Ethel M. Harrison, Clerk

(Reported at 741 P2 770)

Mr. Justice R. C. McDonough delivered the

Opinion of the Court.

The natural father of M.G.M. appeals the September 2, 1986, order of the 13th Judicial District Court, County of Yellowstone, finding M.G.M. to be a youth in need of care and awarding temporary custody to the Montana Department of Social and Rehabilitation Services. We affirm.

This matter was previously before this Court in In the Matter of M.G.M. (1982), 201 Mont. 400, 654 P2 994. The pertinent facts of the case prior to 1982 are contained in that opinion. On appeal, we reversed the lower court's termination of the natural father's parental rights for failure to find that M.G.M. was a youth in need of care remanded for further findings.

During the pendency of the previous appeal, M.G.M. was placed in a foster home in Missoula. Following remand, the termination of parental rights proceedings were

halted midway through trial by agreement of the parties. In a court approved stipulation, the parties agreed that M.G.M. would be placed in the care and custody of the natural father for a period of six weeks. During that period, M.G.M. would meet once a week with psychologist Richard Agosto to monitor M.G.M.'s mental and emotional well-being. In the event Dr. Agosto found M.G.M. was suffering, or likely to suffer, identifiable and substantial impairment of her intellectual or psychological functioning due to the acts or omissions of the natural father, M.G.M. would return to her foster home on a permanent basis. The natural father would maintain visitation rights under the agreement.

Dr. Agosto issued a written report on August 2, 1985, concerning M.G.M.'s mental and emotional well-being during her stay with the natural father. Dr. Agosto found that M.G.M.'s intellectual development was close to that of a fifteen year old while

her emotional and social development was comparable to the nine or ten year old level. During M.G.M.s six week stay with the natural father, Dr. Agosto noted symptoms of emotional stress by M.G.M. including sleep disruption, weight loss, fatigue, feelings of helplessness and increased levels of anger. M.G.M. considered the natural father and his new wife to be critical of her which diminished M.G.M.'s self-esteem.

In his report, Dr. Agosto concluded that M.G.M. suffered identifiable impairment of her psychological functioning during her stay with the natural father. Dr. Agosto described M.G.M. as a very vulnerable young teenager in need of a supportive and loving family. Dr. Agosto recommended that M.G.M. return to her foster family.

The natural father filed a contempt petition on September 12, 1985, alleging the State and guardian ad litem had violated the terms of the stipulation and that he

was entitled to custody of M.G.M. Specifically, the natural father alleged that Dr. Agosto did not conclude M.G.M. had suffered substantial impairment of her intellectual or psychological functioning necessary to terminate his custody rights as provided in the agreement. A hearing on the contempt motion was held October 31, 1985.

Dr. Agosto testified at the hearing that he concluded M.G.M. had suffered substantial impairment of her psychological functioning during her stay with the natural father and would be at risk of greater emotional stress should the placement continue. Following hearing, the court denied the contempt motion of the natural father.

On January 8, 1986, the State filed a motion to set a hearing date to determine whether M.G.M. was a youth in need of care and whether the stipulation entitled the State to maintain M.G.M.'s placement with her foster family in Missoula. A hearing

was held February 6, 1986, and testimony received from Vince Matule, director of the Casey Family Foundation which was responsible for monitoring M.G.M.'s placement. Matule recommended that M.G.M. continue in her present foster home placement with the natural father retaining visitation rights. Matule believed that M.G.M. was in need of stability and a secure family during her adolescence and that her foster family in Missoula met these needs.

The District Court entered its findings of fact, conclusions of law, and order on September 2, 1986. The court found M.G.M. to be a youth in need of care, that it was in M.G.M.'s best interest to continue her placement with her foster family, and that the natural father shall be entitled to regular visitation. The natural father appeals and raises the following issue: Are the District Court's findings of fact and conclusions of law supported by clear and convincing evidence?

The natural father first contends that the District Court erred in adopting previous findings of the District Court because such findings were rejected on appeal by this Court. We disagree. Our previous opinion in this matter clearly stated that the case was remanded "for further findings." 201 Mont. at 401, 654 P2 at 998. We reversed on appeal because the lower court failed to find that the natural father abused or neglected M.G.M. In order to deprive a parent of child custody pursuant to 41-3-404 and -406, MCA, the court must find that the child is abused, neglected or dependent.

With the exception of the District Court finding relating to opinion testimony of the psychiatric nurse, this Court did not reject any of the District Court's findings in our previous opinion. We find no error in the District court adopting these findings on remand. Findings one through nine, objected to by the natural father,

are supported by substantial credible evidence.

The natural father contends there is insufficient evidence to support Dr. Agosto's conclusion that M.G.M. suffered substantial impairment of her psychological functioning during her stay with the natural father and would be at risk of increased emotional stress if the placement continued. The record shows Dr. Agosto is well qualified as a clinical psychologist. Dr. Agosto had weekly sessions with M.G.M. during her stay with the natural father. Dr. Agosto noted that M.G.M. suffered the classic symptoms of depression and emotional stress during the period. Dr. Agosto's testimony and affidavit reflect his belief that M.G.M. suffered substantial psychological impairment while in the custody of the natural father. We find no reason to doubt Dr. Agosto's conclusions regarding M.G.M.

The natural father further contends that

there is not clear and convincing evidence to support the District Court's finding that M.G.M. was a youth in need of care and that the court again improperly applied the "best interest" test. In finding M.G.M. was a youth in need of care, the District Court applied 41-3-102, MCA, which provides in part:

> (2) An "abused or neglected child" means a child whose normal physical or mental health or welfare is harmed or threatened with harm by the acts or omissions of his parent or other person responsible for his welfare.

M.G.M. spent the first five years of her life with her mother, who suffered from chronic schizophrenia. M.G.M. did not develop normally and adapted to a role-reversal with her mother. The testimony of mental health professionals in this case indicates that children of schizophrenics increase their risk of developing schizophrenia if raised by schizophrenic parents because they fail to properly develop their own self-identity. The natural

father is also a diagnosed schizophrenic.

Testimony was given at the May 2 and 3, 1985, hearing by three mental health professionals involved with the case. Each witness favored placing M.G.M. with a foster family to prevent the possibility of M.G.M. developing schizophrenia as a result of being raised by a schizophrenic parent.

Dr. Wagner, a clinical psychologist, testified that it would be stressful for M.G.M. to be in the custody of the natural father, and recommended that M.G.M. continue to reside with her foster family. Testimony was also received from Dr. Tranel, a psychologist who interviewed and tested both M.G.M. and the natural father in 1980. Dr. Tranel stated his opinion that the acts, conduct, or omissions of the natural father posed imminent risk of harm to M.G.M.'s psychological well-being.

Mary Honaker, a certified mental health professional who conducted therapy with

M.G.M., testified that M.G.M. was distressed and apathetic during periods when she visited the natural father. Honaker testified that she felt further visits with the natural father would be harmful to M.G.M.

Dr. Tranel, Dr. Wagner and Ms. Honaker, were not actively involved with M.G.M. or the natural father after 1981. However, both Dr. Tranel and Dr. Wagner testified that the natural father's schizophrenic condition would not improve without therapy and treatment. There is no evidence that the natural father has sought treatment for his condition.

We find clear and convincing evidence in the record to support the District Court's determination that M.G.M. is a youth in need of care within the meaning of 41-3-102, MCA. The record clearly supports transferring custody to the State with M.G.M. continuing in her present foster home.

The District court is affirmed.

(Signature) R.C.McDonough, Justice

We concur:

(Signatures) Harrison, Weber, Hunt, Gulbrandon

APPENDIX B (Typed Copy)

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. 86-538

IN THE MATTER OF M.G.M.)
a Youth in Need of Care.) O R D E R

Frank B. Fitzgerald has filed his petition for rehearing of the above entitled matter and having filed his motion for leave of court to file a brief in support of such petition,

IT IS HEREBY ORDERED that such motion is granted and having considered such petition and brief,

IT IS FURTHER ORDERED that the Petition for Rehearing is denied.

DATED this 17th day of September, 1987.

(Signatures) Turnage, Chief Justice
Harrison, Weber, Sheehy, Gulbrandon, Justices

Filed SEP 17 1987
(Signature) Ethel M. Harrison
CLERK OF SUPREME COURT
STATE OF MONTANA (Received Sept 19-87)

APPENDIX C (Typed Copy)

IN THE DISTRICT COURT OF THE 13TH JUDICIAL DISTRICT OF THE STATE OF MONTANA IN AND FOR THE COUNTY OF YELLOWSTONE

IN THE MATTER OF	)No. DJ-79-188, THE
	)COURT'S FINDINGS OF
MARGARET G. MOORE,	)FACT, CONCLUSIONS
	)OF LAW AND ORDER
Youth in Need of Care.)	

This matter came before this Court on May 2 and 3, 1985, October 31, 1985, and February 6, 1986. Greg Mullowney, Deputy Yellowstone County Attorney, appeared for and on behalf of the Yellowstone County Resource Department of the Montana Department of Social and Rehabilitation Services. Court-appointed guardian ad litem, Damon L. Gannett, appeared on behalf of the above-named youth, Margaret Geraldine Moore. Respondent Frank Fitzgerald appeared with his attorney Jeffrey T. Renz.

This matter was originally brought before this Court pursuant to the State's Petition to Terminate the Respondent's Parental Rights to the above-named youth.

Trial proceedings took place on May 2 and 3, 1985 and remaining testimony was scheduled for May 30, 1985. The parties informed the Court prior to May 30, 1985 that it had reached an agreement settling the case, and that the agreement was being reduced to writing. A written Stipulation was signed by all parties by July 26, 1985 and approved and ordered by this Court on August 13, 1985.

In September 1985 the Respondent filed a Petition to hold the State and guardian ad litem in contempt for violating the terms of the Stipulation and Order. After hearing testimony on October 31, 1985, this Court found that there had been insufficient evidence to hold either party in contempt.

On February 6, 1986, the parties stipulated into evidence the transcript of the October 31, 1985 hearing, and the Court heard other testimony.

The Court, having considered the prev-

ious record in this matter, as well as the evidence produced at all hearings before this particular Court, now makes the following:

FINDINGS OF FACT

1. The above-named child, Margaret Geraldine Moore, was born out of wedlock on June 10, 1972 in Yellowstone County, Montana, to Jewel Moore.

2. Margaret spent the first five years of her life with her natural mother, Jewel, who suffered from chronic schizophrenia, undifferentiated type with paranoid ideation. Jewel was actively psychotic much of the time, heard voices, and had a difficult time caring for Margaret, who was generally unclean and unkempt. Margaret may have been sexually abused while in Jewel's care. Margaret was removed from Jewel's care and placed in a foster care home in 1979. Because of Jewel's demonstrated inability to relate to reality and the inability to relate to the commun-

ity's concerns about Margaret, her parental rights to Margaret were terminated on April 3, 1980. A copy of the Court's Memorandum, Conclusions, and Order in that proceeding is attached hereto and incorporated herein as EXHIBIT A, in order to provide information about Margaret's background.

During the first five years of her life, Margaret failed to develop normally as a child, and exhibited some of the characteristics of schizophrenia. She failed to develop a self-identity, having adapted to a role reversal with her mother. The State and various professionals were of the opinion that there is statistically-established relationship between schizophrenia in parents and the development of schizophrenia in children, based upon genetic and environmental factors. Because of Margaret's genetic background (Jewel's schizophrenia) and the environment in which she lived for the first five years

of her life, she was considered to be "at risk" to develop the mental illness of schizophrenia.

3. Margaret's natural father was then determined to be the Respondent, Frank B. Fitzgerald. Frank had never been married to Jewel, but lived next door to Margaret and Jewel for a period of time after Margaret's birth. Frank's contact with Margaret was extremely limited by Jewel, who did not tell Margaret that Frank was her father and she often expressed to Margaret her revulsion of him.

4. Frank receives a disability pension for a 1963 Veteran's Administration diagnosis of an undifferentiated schizophrenic reaction. Frank was diagonsed schizophrenic in 1980 by Ned Tranel, a duly-qualified clinical psychologist. Frank was also diagnosed as a schizotypal personality disorder by duly-qualified clinical psychologist. Without extensive counseling, psychologists expect their diagonses of Frank

to remain unchanged. No evidence has been provided to show that this intervention has occurred or that Frank's mental condition has changed.

5. After the determination that Frank was Margaret's father, efforts were made to arrange meetings between them. Margaret was in foster care prior to these meetings, and had been regularly receiving therapy from Mary Honaker, a licensed registered nurse and who has been certified since 1979 by the Montana Department of Institutions as a professional person under section 53-21-106, MCA. Two visits occurred after a year and a half of preparation, and resulted in a "smothering" of Margaret by Frank, with Margaret becoming frightened and upset and experiencing a weight loss. There was also concern at this time that Frank was unable to understand Margaret's needs and respond appropriately.

6. The State terminated efforts at

visitations between Frank and Margaret, and moved to terminate his parental rights for the reason that placing Margaret in Frank's custody would significantly increase the risk that she would become mentally ill. The District Court terminated Frank's parental rights and she was subsequently placed in a foster home in Missoula, Montana, through the Casey Family Foundation, a private agency that provides specialized treatment-oriented foster homes for disturbed children. This particular foster home was chosen for Margaret because it is a close, loving, emotional family that provides the nurturance and acceptance that Margaret needs.

7. Frank successfully appealed the termination of his parental rights, and the judgment was reversed and remanded for further findings. See In the Matter of M.G.M., Youth in Need of Care (1982), 39 St. Rptr. 2191, 201 Mont. 400, 654 P2 994.

8. Pending retrial in this matter,

Margaret continued to reside in foster care in Missoula, Montana, and occasionally had visits with Frank, and his new wife, Velma, who had been named as Margaret's godmother by Jewel. Vince Matule, Montana director of the Casey Family Program, testified that Margaret had a lack of emotional responses natural to children. He was concerned about Franks continued lack of understanding about Margaret's needs and Frank's poor judgment in sharing details of sexual abuse and psychological evaluations with her.

9. Margaret is described as being fragile, chameleon-like youth with a critical need at this particular phase of adolescence for nurturance, acceptance, and stable role-models.

10. Partway through the re-trial of this matter, the parties entered into a court approved Stipulation, attached hereto and incorporated as EXHIBIT B. That Stipulationwas designed to provide Frank

with the opportunity to provide for Margaret's parental care in his home for six weeks from June 24 until August 5, 1985. During that period of time, it was agreed that Margaret would meet with psychologist Richard Agosto once per week in order to monitor Margaret's mental well-being. In the event Dr. Agosto found that Margaret had suffered or is at imminent risk of suffering an identifiable and substantial impairment of her intellectual or psychological functioning as a result of the acts or omissions of Frank Fitzgerald, it was agreed that she shall be placed with her foster family on a permanent basis and appropriate arrangements made for visitation between Frank and Margaret.

11. Margaret resided in the Billings, Montana, home of Frank Fitzgerald for the six week period from June 24, 1985 to August 5, 1985. Dr. Agosto's August 2, 1985 written report of his evaluations of Margaret is attached hereto and incorporated

herein as EXHIBIT C. His testimony at the October 31, 1985 hearing is on file herein, identified as EXHIBIT D. Dr. Agosto found at his initial screening that Margaret's mental development showed increased reading ability and above average growth in vocabulary and general information skills for a 13 year old entering the 8th grade, but that her emotional and social development was typical of a 9 or 10 year old child. Dr. Agosto describes Margaret as a ". . .very vulnerable young teenager who has not yet achieved a good level of stability and security." Her self-esteem was described as weak and could be easily disturbed to the point of regression. Dr. Agosto noted that during the period that Margaret resided in Frank's home she showed signs of increased stress and emotional presssure in the forms of sleep disruption, wight loss, feelings of helplessness, sadness, depression, and anger. Dr. Agosto wrote in his report:

"In conclusion, therefore, it is my impression that Margaret Moore has suffered some identifiable impairment of her psychological functioning over the past few weeks. In addition, she is potentially at risk of greater levels of emotional stress and disruption should she be placed on a more permanent basis with the Fitzgeralds. In part, she has begun to show some diminished self-esteem and depressive anxious reactions due to some of the types of interaction that she has had with Frank and Velma. Margaret perceives them, and primarily Velma, as being very critical of her, not accepting Margarets feelings and as to being helpful to her in developing any constructive ways of dealing with difficulties. She also feels that rather than being able to draw from her exposure to Frank and Velma models of effective adult and mature behavior that she has to be more of a leader and more decisive than they are. It appears that the Fitzgeralds have not been very effective in helping Margaret maintain a good level of self-esteem. In fact, their behavior has diminished some of her feelings of self-esteem and security by failing to realize some of her individual needs, reducing her self-respect, and not accepting her personal feelings as being real and failing to support their expression and existence.

12. After Dr. Agosto issued his findings, Margaret was returned to her foster family in Missoula, Montana, continues to attend school there, and is doing well in that placement and not requiring any coun-

seling. Vince Matule, however, expects that she will require additional counseling in the future to deal with the stresses of adolescence.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over all matters, persons, and things involved herein and proper service of process in all matters in this action has been had on all persons involved and concerned herein.

2. Margaret Geraldine Moore is a youth in need of care within the meaning of section 41-3-102, MCA, for the reason that her normal mental health or welfare has been harmed by the acts and omissions of Respondent Frank B. Fitzgerald while she resided in his custody during the summer of 1985, and is threatened with further harm if placed in his custody on a permanent basis. This mental injury is an identifiable and substantial impairment of her intellectual and psychological functioning.

3. Rather than proceeding to trial on the Petition to Terminate the Respondent's Parental Rights, the parties entered into a written Stipulation (EXHIBIT B) to provide for Margarets custody. That Stipulation governs and binds all parties thereto as the resolution of this case.

4. It is in Margaret Geraldine Moore's best interests that she be placed in the temporary care, custody, and control of the Montana Department of Social and Rehabilitation Services with the right to continue her placement with her current Casey Family Program foster family in Missoula, Montana, until she reaches the age of 18 years old, with the right to seek any necessary medical, dental, and psychological treatment for her and have access to that information and share it with the Casey Family Program.

5. Frank Fitzgerald shall be entitled to regular visitation with Margaret Moore, and plans for these visitations shall be

arranged through the guardian ad litem, the Casey Family Program, and counsel for Frank Fitzgerald. That plan shall be reduced to writing and submitted to this Court for approval by September 30, 1986.

Dated this 2nd day of Sept, 1986.

(Signature) William J. Speare, District Judge

CERTIFICATE OF SERVICE Sept 4, 1986

EXHIBIT A of APPENDIX C (Typed Copy)

IN THE DISTRICT COURT OF THE 13TH JUDICIAL DISTRICT OF THE STATE OF MONTANA IN AND FOR THE COUNTY OF YELLOWSTONE

IN THE MATTER OF	)	Cause No.
	)	DJ-79-188
MARGARET G. MOORE	)	MEMORANDUM,
	)	CONCLUSIONS
Dependent and Neglected.	)	AND ORDER

M E M O R A N D U M

Jewel Esther Moore is 43 years old, and a college graduate with a B.A. in journalism and an English major. She has accomplished graduate work in Latin American studies and in journalism editing. She has worked for newspapers, a radio station, the Baptist Board of Missions in New York, the New York City Department of Welfare, and taught English in High School for a brief period. She now lives in a house in Billings, at 318 Terry Avenue, which house was received from her mother. She has not worked since 1967, the year in which her father died leaving her a modest inheritance on which she has been living since that time.

She has not been married but on June 10, 1972, gave birth to a daughter, Margaret G. Moore, who has lived under her care up to the time of the initiation of these proceedings. The child's father has not been determined and the mother declines to name a father. A Mr. Frank Fitzgerald, a neighbor to the mother, claims to be the father, but the mother denies this claim and no proceeding has yet been taken to adjudicate the question.

Starting in May, 1972, the mother came to the attention of Public Health personnel through a Public Health nurse, Mary Honaker, in connection with her pregnancy and because of evidence of mental health problems in the form of loose thinking and a constant upset condition. She was monitored through August 1973, but was not regarded as being pschotic at that time. At the occasion of the last visit of this series, which was August 15, 1973, the concern was that the mother was having

difficulty in taking care of the child and the house was being maintained in a poor condition. Specifically, there were many pets in the house, along with an overwhelming urine smell, and unemptied garbage. Generally, there was evidence of poor housekeeping by the mother. However, she was not continued as an active caseload client at that time.

Although not then know to any public health agency, by 1978 the mother had begun hearing voices no one else could hear and had become obsessed with the feeling that she was always being followed. These conditions led her, in 1978, to take her daughter and leave Billings for a destination purposely kept secret so the voices could not find her. After some traveling, she settled in Lubbock, Texas, where she bought a house and started her daughter in school but in a short time was again plagued by the voices. At times she became utterly terrified and the daughter (then

approximately 6 years old) had to assume the position of taking care of her mother, which included encouraging her mother to rent a motel on some nights in order to avoid the voices. In this process a series of telephone calls from the mother to Velma Morris, a friend and neighbor in Billings since 1970, exposed the condition of the mother and, ultimately, resulted in Velma Morris going to Texas in response to the mother's fear that "they" were threatening to torture and kill her and her daughter. The visit of Velma Morris settle things down, but the mother would not accept her recommendation to visit a doctor there, nor would she return to Billings with Velma Morris when she came home. However, the mother and daughter did come back to Billings soon thereafter and the daughter began attending Broadwater School.

On April 4th, 1979, at the suggestion of the school nurse, the mother took the

daughter to see Dr. Pat Sauer for complaints concerning an eye infection and a bowel-movement difficulty. In the course of the examination, Dr. Sauer noted the perineal area of the child was bruised and this consisted of numerous small bruises and a large one covering much of the area. In response to inquiry as to the cause, the child virtually became hysterical and the examination could go no further than an outward view. No satisfactory explanation was offered by the mother and, in fact, when she was questioned, her responses were very inappropriate and the doctor concluded that she had lost contact with reality and could not comprehend the questions he was asking and the purpose behind them. This conclusion was fortified by the mother's reference at that time to the voices she had been hearing. In the doctor's experience, these circumstances indicated the possibility of child abuse and he made arrangements for the daughter

to be again examined by a female doctor (an appointment which was never kept) and at the same time reported the matter to the Yellowstone County Welfare Department and requested an investigation by the child-abuse team. Specifically, the doctor was concerned about sexual abuse because of the location and nature of the bruises he had found.

On the following day, April 5th, a social worker who served as the intake worker for child abuse started the investigation by checking with the daughter's school and then by making a home visit. The school reported only that the daughter was generally unclean and unkempt. At the home the social worker was not allowed in the house but the mother did talk with her. She contended the bruises were actually just a rask and that it was caused by a bubble bath. She agreed to have her daughter examined again by another doctor. A second visit a few days later gained

entry into the house, but caused the mother to become very upset in consequence thereof. She repeated the bubble bath explanation and acknowledged that she had not taken the child to any other doctor for further examination. With this, the matter was then referred to the school nurse at the Broadwater School, who was the person who had originally prompted the April 4th visit to Dr. Sauer. On April 9th, 5 days after Dr. Sauer's examination, she examined the child and found no bruises existing at that time. This was not regarded as unusual considering the amount of time which had transpired. When the school nurse asked the daughter about what had been happening, the daughter said that she could not talk unless her mother was there but she did explain that "hurting" happened, except that sometimes they would let her sit in a hot bath when there was "hurting". She thought at times that something went into her and, in mentioning

this, she would grimace.

The daughter talked about her mother hearing voices all the time and she was concerned for her and wanted to get her help. The daughter seemed to be very worried about medical things, such as fear of death, and said she didn't cry at "hurting" because she was afraid they would sew something up in her and then she would die. The school nurse felt the child was talking more truth than fantasy and so she paid a visit to the mother. The mother repeated again the bubble bath explanation as the cause, but also mentioned that her daughter walked home from school with a little boy as another possible explanation. Nothing more definite than that was given.

Based upon her total contact, both before and after the April 4th visit to the doctor, the school nurse concluded that the daughter, who was a very bright and self-sufficient little girl, was actually

making decisions for the mother, such as picking out her clothes for her and deciding what to buy. Later, it was also learned that the daughter, as a pre-schooler, had made her own doctor appointments.

On April 10th the daughter did not attend school and the mother called to say that she was going to put her into a different school. This prompted the Welfare Department to seek and secure Court authority to take the child from the mother and place her in a foster home to avoid flight, which was felt to be the real reason behind the removal of the daughter from school.

At the foster home the child was at first very timid and was also reported to be unusually afraid of being alone with the foster father. In the time which has transpired, the daughter has adjusted very well, both as to the new home and to the new school. She is classified as a child of exceptional ability and exhibits anxi-

ety over the accomplishment of this proceeding.

On the day following removal of the daughter, the mother called the Mental Health Center and Mary Honaker, by now an experienced psychiatric nurse, saw her on April 12th. The mother discussed the voices she had been hearing, how they were continuing and were sometimes so loud she could not hear her daughter, and that the voices did not like her daughter. Immediate arrangements were made for the mother to see a psychiatrist, who prescribed medication for her, which the mother proceeded to lose, and had to have replaced. The mother has not continued to use of the medication as recommended and feels that anacin is all she needs.

On April 30th an effort was made to go over the child-abuse staffing report with the mother preparatory to establishing a program to get the mother and her daughter back together again. This meeting caused

the mother to become very upset and very paranoid with the result that she would not and could not continue with Mary Honaker on an individual basis and a group program was immediately arranged for her. Again, the objective was to get the mother stabilized so that her daughter could be returned to her.

Commencing April 30th the mother was enrolled in the Day-Treatment program at the Mental Health Center and she participated on a four-mornings-per-week schedule for six weeks. However, she unable to accept the realization that she had any problem even though she knew and discussed the fact that she was hearing voices. She could not focus on reality and accepted the program as a social experience only. She would not confront the subject of taking care of her daughter and would turn the conversation to other matters when it was raised. Finally, she dropped out of the program against the advice of the men-

tal health personnel who had acquired friendly feelings toward her and were anxious for success on her behalf. Later, the mother did participate in some outpatient sessions, which were held on a weekly basis, but with the same inability to focus on the need to help herself. No progress was actually ever accomplished.

On September 5th several of the welfare and mental health persons visited the mother in her home in an effort to convice her to accept further help in order to make return of her daughter possible. Hospitalization was suggested as a last-resort possibility that had not yet been tried. This was refused. In general, the mother still could not focus upon reality and understand or accept the intentions and purposes of her visitors. Her response to the question of whether she could protect her daughter from abuse was that she could not "because of the ADC mothers". She could only focus upon leaving the area

and when she would do so.

On October 9th the Director of the Day-Treatment Center, as a last resort, attempted a one-to-one conference with the mother, the object of which was to face her with the possibility that permanent custody of her daughter could be taken by the Welfare Department so that the real feelings and reactions of the mother could be determined. The mother's interest in treatment was not revived by this. Instead, she responded with completely dissociated answers. The Director attempted again on October 14th, but when she arrived at the mother's home her daughter was there on a visitation period from the foster home, so that it was inappropriate to have a discussion with the mother at that time. She asked the mother to call her so that she could come back at another time, but the mother has never responded.

In summary, the mother has been diagnosed as a chronic schizophrenic, undiffer-

entiated type with paranoid ideation, who is actively psychotic. Her condition is treatable to an extent, but is not curable; and from the failure of all efforts to help the mother, the conclusion has been reached by the mental health personnel that she is beyond help so far as being able to attain a condition where she can take care of her daughter and provide the reality background needed by a child. The role reversal already developing between mother and child could continue with the child taking care of the mother and being unable to find her own separate identity, thus rendering her vulnerable to a psychotic illness in her own right in the course of time.

The efforts made to maintain a mother-daughter relationship through regular visitation from the foster home have demonstrated the dangers ahead for the daughter. The daughter has been in a play-therapy program since April 19th, and through

the medium of this program, as well as reports from the foster parents, the effects of home visits upon the child have been tracked. The loss of reality experienced on home visits causes increased anxiety in the daughter. She no longer feels safe with her mother and is harassed by not being able to identify herself separate from her mother because of the role reversal which takes place. As a consequence, the frequency of home visitations has steadily declined in the interest of the daughter's welfare and apparently to her relief.

The testimony of the mother at the hearing confirmed the mother's inability to relate to reality and to grasp the purpose of the concern for her daughter. The continued placement of her daughter in a foster home was acceptable to her and she evidenced no distress over a potential Court decision that her daughter would not be living with her in the future.

Since December of 1979 the mother has accepted a 56-year-old male friend, who has an extensive history alcoholism, as a companion in her home. The man, James Smith, testified as to the "topsy-turvy" condition of the home at the time of his arrival and the efforts he has since made to clean the house up and to stock it with food and teach the mother how to cook and take care of the home. He suggests that marriage with the mother is a possibility in the future and feels that the mother's only problem is one of depression from time to time. With respect to the possibility of the daughter being returned to the home, Mr. Smith evidenced considerable equivocation about whether the mother could take care of the daughter in the home if he were not there to help her.

From the mother's standpoint, she feels that she has assumed the position of guardian with respect to James Smith, a situation necessitated by the Government

pension funds coming to Mr. Smith, with respect to which guardianship safeguards are imposed in view of his alcoholic history. She expressed the feeling that the program she was participating in was to take care of Jim Smith for from three to five years.

C O N C L U S I O N S

In light of the foregoing, it is concluded as follows:

1. The mother's mental condition is not curable and renders her unable to properly discharge normal parental responsibilities and to provide a safe and sane environment for her daughter.

2. There are no know alternatives remaining that have a reasonable chance of improving the mother's mental condition to a point that would allow her to re-assume care and responsibility for her daughter.

3. The probability is high that the daughter would develop mental problems similar to those suffered by her mother if

she were to be left with her mother.

4. The daughter, Margaret G. Moore, is an abused and neglected child within the meaning of Section 41-3-102 MCA 1979, and is a youth in need of care.

5. The best interests of the daughter require termination of the mother's parental rights.

6. No final disposition can be entered in this case until the rights of the currently unidentified father of the daughter, Margaret G. Moore, have been considered and determined.

From the foregoing, the Court now makes the following:

O R D E R

IT IS HEREBY ORDERED that the above-entitled Court has jurisdiction over all matters and persons involved herein, except as otherwise noted, and proper service of the necessary citations has been made on all persons whose rights and status will be affected hereby.

IT IS HEREBY ORDERED that the above-named Margaret G. Moore is a youth in need of care as an abused or neglected child within the meaning of Section 41-3-102 MCA 1979.

IT IS HEREBY ORDERED that the parenal rights of Jewel E. Moore, the mother of Margaret G. Moore and respondent herein, are terminated and temporary custody of Margaret G. Moore is continued in petitioner.

IT IS HEREBY ORDERED that the petitioner in this cause take all steps necessary to place at issue for hearing the claim of Frank B. Fitzgerald to be the natural father of Margaret G. Moore in order that the same can be determined preliminary to or as a part of the dispositional hearing to be held in this matter, which is set for the 18th day of June, 1980, commencing at the hour of 9:30 o'clock A.M.

IT IS HEREBY ORDERED that the foregoing Memorandum, which outlines the facts ad-

duced at the hearing in this cause, and the Conclusions of the court reached therefrom shall serve in lieu of formal Findings of Fact and Conclusions of Law.

DATED: April 3rd, 1980

(Signature) Charles Luedke, District Judge

cc: County Attorney
Jones Law Firm
Damon Gannett
Cal Stacey

EXHIBIT B of APPENDIX C (Typed Copy)

IN THE DISTRICT COURT OF THE 13TH
JUDICIAL DISTRICT OF THE STATE OF MONTANA
IN AND FOR THE COUNTY OF YELLOWSTONE

IN THE MATTER OF) No. DJ-79-188
MARGARET GERALDINE MOORE) STIPULATION
Youth in Need of Care.) AND ORDER

COMES NOW Petitioner, the State of Montana, Respondent Frank B. Fitzgerald, and the Guardian Ad Litem, Damon L. Gannett, and stipulate as follows:

1. Margaret Moore shall physically reside with Respondent at his residence in Billings, Montana, commencing on or about June 24, 1985, and continuing until August 5, 1985.

2. During this period, Respondent agrees that Margaret Moore shall consult with a psychiatrist or a licensed psychologist. During the initial three (3) week period of Margaret Moore's residence with Respondent, Margaret shall attend a minimum of one (1) appointment per week with the selected psychiatrist or psychologist. If, in the opinion of the psychiatrist or

psychologist that is selected to consult with Margaret Moore, more frequent appointments are warranted, the schedule of appointments as is prescribed by the psychiatrist or psychologist shall be followed by all parties hereto.

3. Margaret shall also be permitted to visit with Guardian Ad Litem during this period as frequently as is deemed necessary. A minimum of one (1) such visit per week shall occur.

4. Respondent further agrees to permit a Department of Social Rehabilitation Services social worker to visit his home once per week. Said visits shall be by appointment only. The Department shall provide all counsel with copies of all notes, reports, memos, and other documents prepared or generated as a result of such visits, on a weekly basis. Respondent shall be permitted to have any person of his choice monitor such visits.

The purpose of these visits shall be to

monitor Margaret Moore and Respondent in terms of their mental and emotional well-being.

5. Margaret Moore shall be permitted to telephone her present foster family as she wishes, except, however, Respondent may limit the frequency and duration of those calls when this cost exceeds fifty ($50) per month.

Margaret Moore may visit with her foster family on alternative weekends unless a different frequency is recommended by the psychiatrist/pyschologist.

6. The selected psychiatrist/psychologist shall issue his/her report during the week of August 5, 1985. That report shall be made for the purpose of determining whether Margaret Moore has suffered or will suffer identifiable (hand-written insert, no initials, the two words, 'and substantial') impairment of her intellectual or psychological functioning or whether she is at imminent risk of an identifi-

able and substantial impaiment of her intellectual or psychological functioning as a result of the acts or omissions of the Respondent.

In the event Margaret Moore has suffered, or is threatened with the impairment described above, Margaret Moore shall be immediately placed with he foster family on a permanent basis. The parties shall thereafter come to an agreement providing for visits between Respondent and Margaret Moore.

7. In the event the psychiatrist/psychologist does not conclude that Margaret Moore has suffered or is threatened with the impairment described above, she shall remain with Respondent for the 1985-86 school year. At this time, the parties shall reevaluate the need and/or frequency of the visits and consultations set out in paragraphs 2, 3, 4, and 5 above.

8. At the end of the 1985-86 school year, the psychiatrist/psychologist shall

issue a second report as described in paragraph 6 above. In the event this report reaches the conclusions set out in paragraph 6, Margaret Moore shall be placed permanently with a foster family. The parties shall come to an agreement as to visitation.

9. In the event the psychiatrist/psychologist concludes that Margaret Moore has not suffered and will not suffer an identifiable and substantial impairment of her intellectual and psychological functioning as a result of the acts or omissions of Repondent, all Petitions in this case shall be dismissed with prejudice.

10. In the event the psychiatrist/psychologist cannot conclude on or about June 15, 1986, that Margaret Moore has suffered or is at imminent risk of suffering an identifiable and substantial impairment of her intellectual and psychological functioning as a result of the acts or omissions of Respondent, Margaret Moore shall

remain with Respondent and this case shall be reviewed by the psychiatrist/psychologist annually.

11. The parties agree that Dr. Richard Agosto and Dr. Marian Martin may conduct the evaluations called for in this stipulation. Said psychologist shall conduct an initial evaluation in June 1985, to provide "base line" data. Copies of all reports shall be provided to all counsel.

12. By this stipulation no party makes any admission regarding the present or future fitness or unfitness of Respondent as a prospective custodial parent. This stipulation represents the parties' temporary resolution of this case.

13. This stipulation does not limit the Petitioner's authority to intervene in or to provide services, including emergency protective services, to the Respondent and Margaret Moore on such grounds as provided in Title 41, MCA.

14. Margaret Moore, if she so choosed,

shall be allowed to visit the Curtis Foster Home from August 5, 1985, until August 19, 1985.

SUBSCRIBED to this 26th day of July, 1985.
STATE OF MONTANA, ex rel.
Department of Social and Rehabilitation Services, Petitioner.

By (Sig) Mullowney, Deputy County Attorney

FRANK B. FITZGERALD, Respondent.

(Sig) Fitzgerald, FRANK B. FITZGERALD

FRANK B. FITZGERALD, Respondent.

By (Sig) Renz, One of his attorneys.

DAMON L. GANNETT

(Sig) Gannett, Guardian ad Litem

(Original done on stationery of the law firm of Olsen, Christensen & Gannett)

ORDER

Pursuant to the Stipulation of all parties hereto, which Stipulation has been presented to this Court, this Court does hereby enter the following:

ORDER

1. IT IS HEREBY ORDERED that said stipulation is approved and that all par-

ties hereto conduct themselves in accordance with the terms of that certain Stipulation dated the 26th day of July, 1985;

2. IT IS FURTHER HEREBY ORDERED that the hearing on the Petition which has been filed herein is continued and postponed until further Order of the Court.

DATED this 13th day of August, 1985.

(Sig) Holmstrom, District Judge

IN THE ABSENCE FROM CHAMBERS

OF JUDGE SPEARE OF DEPT. NO. 4

EXHIBIT C of APPENDIX C (Typed Copy)

PSYCHOLOGICAL ASSOCIATES
RICHARD M. AGOSTO, Ph.D.
CLINICAL PSYCHOLOGIST
1215-24th St.W., Billings, Mt. 59102
406-652-1410

August 2, 1985

Mr. Damon L. Gannett
Attorney at Law
720 North 30th Street
Billings, Mt. 59101-0997

Re: MARGARET MOORE

Dear Damon:

I have now had the opportunity to evaluate and treat Margaret Moore over the past six weeks that she has been residing with Frank and Velma Fitzgerald in Billings. The actual visits occured over the dates of June 24th, July 1st, July 9th, July 16th and yesterday, August 1st of this year. My contacts have been directly with Margaret on a one-to-one basis and in addition I have spent some time with Frank and Velma Fitzgerald alone and with Margaret present as well. In addition, my activities surrounding this case have in-

volved some telephone contacts with you and other interestd parties such as Vince Matule of the Casey Foundation and Ken and Marilyn Curtis, Margaret's foster parents in Missoula. The total period of evaluation and treatment over the past six weeks has been about seven hours.

My initial visits with Margaret were to assess her intellectual and psychological state and observe some interaction of this thirteen year old with her natural father Frank and his wife Velma. Some formal testing was given to screen out any initial problems in learning or personal difficulties. The tests presented included the Immediate Test, the Reading Section of the Wide Range Achievement test - Revised, the Coopersmith Self-Esteem Inventory, a series of Human Figure and Family Drawings, and an Incomplete Sentences Blank (High School Form).

The initial screening showed that her mental development was close to that of a

fifteen year old as compared to a thirteen year chronological level. This mental development is indicative of some above average growth in her vocabulary and general information skills. In addition, her reading recognition or ability to pronounce words out loud was at the 61st percentile for her age. She will be entering the 8th Grade and she currently reads at a level which is more frequently seen in people who are completing an 8th grade education. In contrast, her emotional and social development was somewhat below what would be expected from the basis of her intellectual development and ability. She showed some characteristics of emotional and social growth which are typically seen by children closer to the 9 or 10 year age level. It should also be noted that Margaret is someone who has worked very hard at controlling herself and holding back many outward expressions of emotion and feeling. She showed some underlying confusion

and aggression but works very hard at maintaining her composure and self-control. This young teenager seemed to be expressing through the psychological tests even from the outset that she has not completely fit into any family or formed any lasting bond or attachment. When asked to draw her family, for example, the closest group that she identified with was the Curtis family. But even with that context, Margaret projects that she does not exactly fit in at this time. She badly wants to be a part of that group but recognizes that stress and difficulties facing her which have made her "different". In fact, she indicated that if she could change one thing about herself it would be that she would "have a normal family and be someone else".

In terms of her self-esteem scores on the Coopersmith Inventory, Margaret showed at the start of therapy that she felt quite comfortable with the home that she

was in specifically the Curtis home and was also getting along quite well in school and with her peers in Missoula. But even at the initial stages of treatment, she did have some difficulties in her own personal self-esteem experiencing some questions about her own competence, self-worth, significance and being somewhat insecure about her own self-approval. She was very outspoken about her fears of the possibility of living with the Fitzgeralds.

Thus, it was clear from the start of the evaluation and therapy meetings that Margaret is a very vulnerable young teenager who has not yet achieved a good level of stability and security. Her self-esteem is rather weak and could be easily disturbed to the point where we would see some regression and decompensation.

Over the time that Margaret was in the Fitzgerald home from the end of June up until the present she did show some signs

of increased stress and emotional pressure. Some indirect symptoms of emotional stress were noted through problems in sleep disruption, weight loss, feelings of helplessness and sadness, and increased levels of anger. She expressed some of her feelings both directly to me and also indirectly through some poetry and letters written to her friend and her foster family. She also reports that she is "tired all of the time" and this is often another sign of depression when there is no basis for the fatigue. She also felt that she was not to the point of any development of self-destructive ideas but was very upset. She saw some positive aspects of the six week visit with the Fitzgeralds including an opportunity to make some new friends in the area of Billings and to see some of her old acquaintances. However, meeting the "old people" that she knew before has brought up some unpleasant memories of her past stressful experiences when she was

living with her natural mother. This child is one who holds back much expression of feeling but reports that she has begun raising her voice but "not yelling" at Frank and Velma. She is obviously becoming more angry and also some of her anger has led to withdrawal from them and disruption of the communication within this group. She tends to avoid communication within this group. She tends to avoid communication at times because of the strain in their interactions.

In conclusion, therefore, it is my impression that Margaret Moore has suffered some identifiable impairment of her psychological functioning over the past few weeks. In addition, she is potentially at risk of greater levels of emotional stress and disruption should she be placed on a more permanent basis with the Fitzgeralds. In part, she has begun to show some diminished self-esteem and depressive anxious reactions due to some of the types of in-

teraction that she has had with Frank and Velma. Margaret perceives them, and primarily Velma, as being very critical of her, not accepting Margaret's feelings and as not being helpful to her in developing any constructive ways of dealing with difficulties. She also feels that rather than being able to draw from her exposure to Frank and Velma models of effective adult and mature behavior that she has to be more of a leader and more decisive than they are. It appears that the Fitzgeralds have not been very effective in helping Margaret maintain a good level of self-esteem and security by failing to realize some of her individual needs, reducing her self-respect, and not accepting her personal feelings as being real and failing to support their expression and existence.

It is clear that Margaret is a very vulnerable young teenager who could easily regress with continued levels of stress and disruption in her life. She is only

beginning to form some stability and additional sudden and drastic changes in her home placement could only hurt her even more from a psychological standpoint. The emerging and potential psychological harm could destroy her ability on a permanent basis to give and receive love. She also could form more of a negative self-evaluation and see herself as being inferior, anxious and depressed. With this continued type of pressure as been evidenced in the Fitzgerald home, we may even begin to see Margaret acting out in a more direct manner either through running away or some type of further personal and social regression. It would be my recommendation that she should remain placed with the Curtis family. For Margaret's sake, the Curtis family has begun to provide her with a very supportive and loving home. Remaining in the foster family would seem to give Margaret a very good chance in the future to show even further emotional de-

velopment and growth and to overcome some of her past problems which developed through the experiences she encountered in living with her natural mother.

Thank you for your continuing cooperation and interest in working with Margaret Moore. Please let me know if there is any additional information that you would need. As you will note, I am sending a copy of this letter to Mr. Jeffrey Renz, the attorney for Mr. and Mrs. Fitzgerald. Please feel free to share the information with the other parties involved including the court and representatives from Social and Rehabilitation Services. I would be most interested in providing any further service to Margaret if she returns to the Billings area.

Sincerely yours,
(Sig) Agosto, Richard M. Agosto, Ph.D.
Clinical Psychologist
RMA:sf
cc: Jeffrey Renz
Attorney at Law

APPENDIX D (Typed Copy)

IN THE DISTRICT COURT OF THE 13TH JUDICIAL DISTRICT OR THE STATE OF MONTANA IN AND FOR THE COUNTY OF YELLOWSTONE

IN THE MATTER OF	)CauseNo DJ-79-188
	)FINDINGS OF
MARGARET GERALDINE MOORE	)FACT, CONCLUSIONS
	)OF LAW
Youth in Need of Care.	)AND ORDER

This matter has come on regularly in a series of proceedings and hearings held on the dates of September 11th, 1980, November 14th, 1980, April 15th, 1981, and April 24th, 1981, and finally became submitted to the Court for consideration upon completion of written briefing completed on June 5th, 1981. On the occasion of each hearing or proceeding, Calvin J. Stacey was present as counsel for Frank B. Fitzgerald; Robert J. Waller or W. Corbin Howard, Deputy County Attorney for the County of Yellowstone, was present as counsel for the Department of Social and Rehabilitation Services; and Damon L. Gannett, the duly appointed Guardian ad Litem and counsel for the above-named minor child, was

also present. Witnesses were duly sworn on behalf of all parties and the matter was submitted to the Court and, after due consideration, the Court now makes the following:

FINDINGS OF FACT

1. The Court has jurisdiction over all matters, persons and things involved herein.

2. Proper service of process in all matters of law regarding this action has been had on all persons involved and concerned herein.

3. That the parental rights of the natural mother of Margaret Geraldine Moore (hereinafter, "Margaret") have been terminated by previous action of this Court taken on April 3rd, 1980. A copy of the Memorandum, Conclusions and Order representing such action is attached hereto and incorporated herein for the historical information it provides concerning the child involved in this matter and her

prior family circumstances. <Note: See Exhibit A of Appendix C, App pages 28-47>

4. That the natural father of Margaret has heretofore been determined to be Frank B. Fitzgerald (hereinafter, "Frank"). He is 51 years of age. He and Margaret, aged 8 years, have never resided together or had any personal contact between them, except as hereinafter described.

5. That the natural mother of Margaret was diagnosed as an undifferentiated schizophrenic, and that Margaret spent the first five years of her life living in her custody. During that time, Margaret failed to develop normally as a child, and exhibited some of the characteristics found in schizophrenia. She also suffered from a failure to develop self-identity, having adapted to a role-reversal with her mother. During such five years, Frank was rejected by the mother in all contacts, and Margaret knew him only through the mother's revulsion to him and her identifica-

tion of him as the "kook".

6. That there is a statistically-established relationship between schizophrenia in parents and consequent development of schizophrenia in children, based upon genetic and environmenal factors.

7. That because of Margaret's genetic background, as well as the environment in which she lived for the first five years of her life, she is "at risk" to develop the mental illness of schizophrenia.

8. Margaret, in addition, is a very intelligent and particularly sensitive, fragile and chameleon-like young lady, for whom it is extremely important to provide a strong, stable adult female role model in order that she may develop normally from a girl into a young woman.

9. Frank is skilled in the field of electronics and is regularly employed with a good work record. He gets along with his fellow employees and is financially sound. He is a law-abiding citizen. He has never

been married, and the longest period o
close association with a woman has bee
seven months.

10. That Frank has a medical histor
which includes a diagnosis by the Veteran
Administration in 1963, as:

> ". . . schizophrenic reaction, undif-
> ferentiated type, in good partial remis-
> sion, manifested by some blunting o
> emotions, restricted interests, mentall
> competent . . ."

for which he receives a 70% disabilit
pension.

11. That Frank has also been diagnose
as a schizophrenic by Dr. Ned Tranel,
clinical psychologist, as of July 30th
1980. That conclusion is echoed by th
psychiatric nurse, Mary Honaker, who ha
had past contact with Frank in the cours
of working with Margaret and Margaret'
mother over the years since prior to Marg
aret's birth.

12. Frank has also been diagnosed a
having a schizotypal personality disorde
by Dr. Stephen Wagner, another clinica

psychologist. This is a condition which is said to make him less than ideal as a parent, but not to render him completely inadequate, making possible a trial period of closely monitored visitation between Frank and Margaret as an evidence-gathering device for a later determination as to custody.

13. In support of his efforts to secure custody of Margaret, Frank has also submitted to a 40-minute psychiatric examination interview with Dr. Thomas W. Van Dyk on or about July 15th, 1980. In his written report, Dr. Van Dyk found no major psychiatric disorder with Frank and recommended:

> ". . . that if no conflicting information turns up, Mr. Fitzgerald be given custody of his daughter . . ."

Frank did not apprise Dr. Van Dyk of his 70% disability rating for schizophrenic reaction, a fact which was upsetting to the Doctor, but not destructive of his conclusion, other than that his final

recommendation made at time of testifyi
was that a program of visitation betwe
Frank and Margaret be eased into, nothi
sudden, with the results to be check
after several months, so that actu
experience could settle the question as
how it would work out.

14. With respect to visitation, Fra
wants custody of Margaret outright, b
would yield with some reluctance to
introductory process of visitation. Ho
ever, if that produced a result demo
strating that his contact with her w
adverse to Margaret's best interests,
would still insist upon custody and purs
Court appeals to the highest forum f
that purpose. Such stated position
Frank adds to the confirmation appear
in other parts of his testimony, and
the testimony of other witnesses, th
Frank is able to function only in the se
vice of his own needs and is lacking
the ability to recognize, appreciate a

accommodate the needs of others or adapt to their exercise of any self-control in their own lives.

15. Efforts at accomplishing visitation between Frank and Margaret were recently made, and two meetings did occur. The results were described as a "smothering" by Frank of Margaret, with an adverse effect upon Margaret in the form of extreme fright, a five-pound weight loss, stress, and a regression in reality testing. As a consequence, visitation efforts were terminated.

16. That on the basis of the totality of the psychiatric and psychological examinations conducted of Frank, together with the other evidence adduced, it is clear that placing custody of Margaret with Frank would increase the risk of her becoming mentally ill by a probability greater than 50% at a minimun, in the view of one witness and to an almost certainty in the view of others. Because of the

demonstrated adaptive characteristics of Margaret, it is clear that a placement of her with Frank will clearly result in a loss of her own identity and development, and tip the already heavily-weighted scale of Margaret's future against her normal development.

17. Under the circumstances existing, it would be detrimental to the best interests of Margaret to defer a final decision with respect to her custody pending the implementation of further visits with Frank as an evidence-gathering measure, since the adaptive characteristics of Margaret would render the results untrustworthy and, also, because of Frank's determination to reject any results not favorable to his dispositions in any and all events. The status of the evidence clearly advises that the process of attempting further trial visitation would in itself be a destructive one from Margaret's standpoint.

18. Under the circumstances existing,

it would also be detrimental to the best interests of Margaret to be placed in the permanent custody of Frank.

From the foregoing Findings of Fact, the Court now makes its:

CONCLUSIONS OF LAW

1. That the Court has jurisdiction over all matters, persons and things involved herein and proper service of process has been had on all persons involved and concerned herein.

2. That the challenge of Frank B. Fitzgerald to the constitutionality of the Uniform Parentage Act has not been supported by any adequate authorities and is without merit.

3. That the motion of Frank B. Fitzgerald requesting an order establishing visitation with Margaret Geraldine Moore should be denied.

4. That it is in the best interest of Margaret Geraldine Moore that she be placed in the custody of the Department of

Social and Rehabilitation Services of the State of Montana, and that the parental rights to Margaret Geraldine Moore with Frank B. Fitzgerald should be terminated on the ground and for the reason that it would be detrimental to her best interests to be placed in his custody.

In view of the foregoing Findings of Fact and Conclusions of Law, the Court now makes the following:

O R D E R

IT IS HEREBY ORDERED as follows:

1. That permanent custody of Margaret Geraldine Moore is granted to the Department of Social and Rehabilitation Services.

2. That the parental rights to Margaret Geraldine Moore of Frank B. Fitzgerald are hereby terminated.

3. That the motion of Frank B. Fitzgerald to dismiss the proceedings on the ground that the Uniform Parentage Act is unconstitutional is DENIED.

4. That the motion of Frank B. Fitzgerald requesting an order for establishing visitation with Margaret Geraldine Moore is DENIED.

5. That the Clerk of the above-entitled Court shall give notice hereof pursuant to Rule 77(d) of the Rules of Civil Procedure.

DATED: June 29th, 1981.

(Sig) Charles Luedke, District Judge.
cc: County Attorney
Damon L. Gannett
Calvin J. Stacey

APPENDIX E-A <Typed copy>

39 <Montana> STATE REPORTER 2191
<Also see 654 P2 994>

NO. 81-523

IN THE MATTER OF M.G.M.,
YOUTH IN NEED OF CARE
Submitted: Sep. 17, 1982
Decided: Dec. 9, 1982

CHILDREN, Appeal by Natural Father from Order Terminating Parental Rights, Whether it was error to Apply the "Best Interest of the Child" test rather than the "Abuse and Neglect" Standards, Whether there is Clear and Convincing Evidence to support either Test, Whether a psychiatric Nurse was qualified to give an expert opinion and diagnosis of Appellant's mental health

Appealed from the 13th Judicial District Court, Yellowstone County, Hon. Charles Luedke, Judge

For Appellant: Patten and Renz, Billings

For Respondent: Olsen, Christensen and Gannett, Billings. Harold F. Hanser, County Attorney, Billings

Jeffrey Renz argued the case orally for

Appellant; Mr. Damon Gannett <Guardian Ad Litem>; Mr. Stephen Rowinski, Deputy County Attorney, for Respondent <gave no oral argument>.

Opinion by Justice Morrision; Justices Harrison, Shea, Weber and Sheehy concurred.

Reversed and remanded <for further findings>

Mr. Justice Morrison, delivered the Opinion of the Court.

Frank Fitzgerald, the natural father of the child, M.G.M., appeals from a judgment issued by the District Court of the 13th Judicial District, Yellowstone County, terminating his parental rights.

The child, M.G.M., was born out of wedlock on June 10, 1972. She lived solely with her mother until 1979, when the Department of Social and Rehabilitation Services (SRS) placed her in a foster home. In April 1980, the mother's parental rights were terminated.

When appellant discovered the proceedings to terminate the mother's parental rights, he filed an acknowledgement of paternity of the child and sought unsuccessfully to intervene in the proceedings.

On May 28, 1980, SRS filed a petition for temporary investigative authority and protective services, claiming that M.G.M. was in danger of being abused and neglected by the appellant. The District Court granted the petition. Appellant was not allowed contact with the child except by recommendation of mental health worker and psychiatric nurse, Mary Honaker. The District Court also ordered appellant to undergo a psychological evaluation.

In July 1980, appellant was allowed to meet with his child for the first time. Two one-hour sessions were held under the supervision of Mary Honaker. The meetings were then discontinued because the child appeared upset and frightened by her father.

On September 11, 1980, the guardian ad litem for the child filed a petition to determine paternity and to determine whether appellant's parental rights should be terminated under the provisions of the Uniform Parentage Act specifically section 40-6-130, MCA. On September 23, 1980, SRS filed a petition under section 41-3-401, MCA, asking that M.G.M. be declared dependent and neglected, and requesting permanent custody and authority to assent to adoption. Over objections by appellant, the District Court consolidated the proceedings brought by the guardian and the SRS.

On November 14, 1980, pursuant to section 40-6-111, MCA, the District Court declared that appellant was the natural father of M.G.M.

A series of hearings were then held. Nearly all of the evidence at these hearings pertained to the mental health of the child and her father.

Based on the testimony at the hearings, the District Court made the following significant findings of fact:

"5. That the natural mother of M.G.M. was diagnosed as an undifferentiated schizophrenic, and that M.G.M. spent the first five years of her life living in her custody. During that time, M.G.M. failed to develop normally as a child, and exhibited some of the characteristics found in schizophrenia. She also suffered from a failure to develop self-identity, having adapted to a role-reversal with her mother. During such five years, Frank (appellant) was rejected by the mother in all contacts; and M.G.M. knew him only through the mother's revulsion to him and her identification of him as the 'kook'.

"6. That there is a statistically-established relationship beteeen schizophrenia in parents and consequent development of schizophrenia in children, based upon genetic and environmental factors.

"7. That because of M.G.M.'s genetic background, as well as the environment in which she lived for the first five years of her life, she is 'at risk' to develop the mental illness of schizophrenia.

"8. M.G.M., in addition, is a very intelligent and particularly sensitive, fragile and chameleon-like young lady, for whom it is extremely important to provide a strong, stable adult female role model in order that she may develop normally from a girl into a young woman.

"9. Frank is skilled in the field of electronics and is regularly employed with a good work record. He gets along with his fellow employees and is finan-

cially sound. He is a law-abiding citizen. He has never been married, and the longest period of close association with a woman has been seven months.

"10. That Frank has a medical history which includes a diagnosis by the Veterans Administration in 1963, as '. . . schizophrenic reaction, undifferentiated type, in a good partial remission, manifested by some blunting of emotions, restricted interests, mentally competent . . .'

"for which he receives a 70% disability pension.

"11. That Frank has also been diagnosed as a schizophrenic by Dr. Ned Tranel, a clinical psychologist, as of July 30th, 1980. That conclusion is echoed by the psychiatric nurse, Mary Honaker, who has had past contact with Frank in the course of working with M.G.M. and M.G.M.'s mother over the years since prior to M.G.M.'s birth.

"12. Frank has also been diagnosed as having a schizotypal personality disorder by Dr. Stephen Wagner, another clinical psychologist. This is a condition which is said to make him less than ideal as a parent, but not to render him completely inadequate, making possible a trial period of closely monitored visitation between Frank and M.G.M. as an evidence-gathering device for a later determination as to custody.

"15. Efforts at accomplishing visitation between Frank and M.G.M. were recently made, and two meetings did occur. The results were described as a 'smothering' by Frank of M.G.M., with an adverse effect upon M.G.M. in the form of extreme fright, a five-pound weight loss, stress, and a regression in reality testing. As a consequence, visitation efforts were terminated.

"16. That on the basis of the totali-

ty of the psychiatric and psychological examinations conducted of Frank, together with the other evidence adduced, it is clear that placing custody of M.G.M. with Frank would increase the risk of her becoming mentally ill by a probability greater than 50% at a minimum, in the view of one witness, and to an almost certainty in the view of others. Because of the demonstrated adaptive characteristics of M.G.M., it is clear that a placement of her with Frank will clearly result in a loss of her own identity and development, and tip the already heavily-weighted scale of M.G.M.'s future against her normal development.

"17. Under the circumstances existing, it would be detrimental to the best interests of M.G.M. to defer a final decision with respect to her custody pending the implementation of further visits with Frank as an evidence-gathering measure, since the adaptive characteristics of M.G.M. would render the results untrustworthy and, also because of Frank's determination to reject any results not favorable to his dispositions in any and all events. The status of the evidence clearly advises that the process of attempting further trial visitation would in itself be a destructive one from M.G.M.'s standpoint.

"18. Under the circumstances existing, it would also be detrimental to the best interest of M.G.M. to be placed in the permanent custody of Frank."

The District Court then concluded as a matter of law that it would be in M.G.M.'s best interest to place her in the custody of SRS, and that appellant's parental

rights be terminated.

Appellant has raised the following issues for review:

(1) Whether the District Court erred by applying the "best interests of the child" test in section 40-6-130 (1), MCA, instead of the "abuse and neglect" standards in sections 41-3-401, et seq., MCA?

(2) Whether there is clear and convincing evidence to support either the "best interests of the child" test or the "abuse and neglect" test?

(3) Whether psychiatric nurse, Mary Honaker, was qualified to give an expert opinion and diagnosis of appellant's mental health?

Appellant claims that sections 40-6-128 and 40-6-130, MCA, should not have been applied to him, and that the District Court therefore erred by terminating his parental rights absent any findings of abuse or neglect. We agree and remand for further findings.

Here, the District Court apparently applied the "best interests of the child" standard from section 40-6-130 (1), MCA. Section 40-6-130 (1), MCA, provides in part:

> "If the court finds it would not be in the best interests of the child to grant custody to the putative father, the shall terminate his rights to the child."

Section 40-6-128 (1), MCA, describes when the "best interests of the child" test should be applied to a putative father:

> "If a child is born out of wedlock and the mother executes or proposes to execute a release terminating her rights to the child or if the child otherwise becomes the subject of an adoption proceeding, the agency, person to whom the child has been or is to be relinquished, or the mother or person having custody of the child shall file a petition in the district court to terminate the parental rights of the father, unless the father's relationship to the child has been previously terminated or determined not to exist by the court. The court shall hold a hearing as soon as practical to determine the identity of the father and to determine or terminate the rights of the father as provided in this section and 40-6-129 and 40-6-130 . . ." (Emphasis added.)

The key language here is, "or if the child otherwise becomes the subject of an adoption proceeding." Respondents claim that when the mother's rights were terminated, the child became subject to a "potential adoptive proceeding". Admittedly, however, SRS is seeking temporary custody on the grounds that M.G.M. is a youth in need of care and neglected or abused within the meaning of section 41-3-4401, et seq., MCA. As such, the provisions governing a "youth in need of care" proceeding must be controlling.

Moreover, section 40-6-128, MCA, did not give the guardian of the child the right to petition for termination of the appellant's parental rights. Only "the agency, person to whom the child has been or is relinquished or the mother or the person having custody" may file a petition for determination of a putative father's rights. The District Court erred by consolidating the guardian's petition with

that of SRS.

It is well-established that absent findings of abuse or neglect based upon clear and convincing evidence, parental rights may not be terminated. Matter of Guardianship of Doney (1977), 174 Mont. 282, 570 P2 575; In re the Matter of J.L.B. (1979), 182 Mont. 100, 594 P2 1127; and Stanley v. Illinois (1972), 405 US 645, 92 S.Ct.1208, 31 L.Ed2 551. These constitutionally protected parental interests in the child are not weakened by the fact that a child is born out of wedlock. Matter of J.L.B., 594 P2 at 1136, referring to Stanley v. Illinois, 405 US 651-652, 92 S.Ct. at 1213, 31 L.Ed2 at 559.

Further, this Court has held that a finding of abuse, neglect, or dependency "is the jurisdictional prerequisite for any court ordered transfer of custody." In re Gore (1977), 174 Mont. 321, 570 P2 1110, 1113.

Only <u>after</u> a showing of dependency,

abuse, or neglect, is the "best interests of the child" test the appropriate basis for determining custody. See Doney, supra; Gore, supra; Henderson v. Henderson (1977), 173 Mont. 429, 568 P2 177; and In the Matter of Guardianship of Ashenbrenner (1979), 182 Mont. 540, 597 P2 1156, 1162.

Therefore, the District Court here was obligated to find that the child was a "youth in need of care" and abused or neglected in order to deprive appellant of custody and terminate his rights. Section 41-3-102, MCA, provides the applicable definitions:

> "(2) An 'abused or neglected child' means a child whose normal physical or mental health or welfare is harmed or threatened with harm by the acts or omissions of his parent or other person responsible for his welfare.
>
> "(3) 'Harm to a child's health or welfare' means the harm that occurs whenever the parent or other person responsible for the child's welfare:
>
> "(a) inflicts or allows to be inflicted upon the child physical or mental injury, including injuries sustained as a result of excessive corporal punishment;
>
> "(5) 'Threatened harm' means imminent risk of harm.

> "(8) 'Mental injury' means an identifiable and substantial impairment of the child's intellectual ~~or~~ psychological functioning."

During appellate argument, the guardian for the child admitted that the District Court had not made any findings that the child was abused or neglected by appellant. The findings only determined the child's best interests. More importantly, these findings do not provide a sufficiant basis on which to conclude that the child would be in danger of "imminent risk of harm" if she lived with or visited with appellant. We therefore remand this case for further findings.

On remand, the opinion of the psychiatric nurse that appellant is suffering from schizophrenia should not be admitted without further foundation. We agree that the determination of a person as an expert is within the discretion of the trial court, and can be set aside only upon abuse of discretion. Goodnough v.

State (1982), ___Mont.___, 647 P2 364, 39 St.Rep. 1170. Rule 702, M.R.Evid. Nevertheless, nothing in this record suggests that the nurse has had the training, experience, or education to diagnose schizophrenia. See Jenkins v. US (1962), 307 F2 637.

The District Court judgment is reversed and remanded for further findings.

APPENDIX E-B <Typed Copy>

IN THE SUPREME COURT OF THE STATE OF MONTANA
No. 81-523
IN THE MATTER OF M. G. M.

Youth in Need of Care.

O R D E R

PER CURIAM:

Appellant Frank Fitzgerald has filed herein his motion for a stay of the judgment of the District Court in Cause # DJ-79-188, in the District Court of the 13th Judicial District of the State of Montana, in and for the County of Yellowstone. The Court has examined and considered the same.

IT IS NOW ORDERED:

(1) Respondent and all other interested parties, and each of them, are granted 20 days from the date hereof in which to prepare, file and serve any response or objection to appellant's motion.

(2) The judgment of the District Court of the 13th Judicial District of the State

of Montana, in and for the County of Yellowstone in that cause entiled "In the Matter of M.G.M.", the same being Cause #DJ-79-188, is hereby stayed until further order of this court.

(3) The Clerk is directed to mail a true copy of this order to the Department of Social and Rehabilitative Services of the State of Montana, to all attorneys of record for any parties in this cause, and to the Clerk of the District Court of the 13th Judicial District of the State of Montana, in and for Yellowstone County.

DATED this 15th day of April, 1982.

For the Court

(Sig) Haswell, Chief Justice
Filed Apr 15 1982
Thomas J. Kearney
Clerk of Supreme Court
State of Montana

APPENDIX E-C <Typed Copy>

IN THE SUPREME COURT OF THE STATE OF MONTANA
No. 81-523
IN THE MATTER OF M. G. M.

Youth in Need of Care.

O R D E R

PER CURIAM:

Appellant Frank Fitzgerald has filed herein his motion for a stay of judgment and visitation rights pending appeal. The guardian ad litem and counsel for the youth has filed his response to said motion. The Court has examined and considered the same.

IT IS ORDERED:

(1) The order of the District Court dated July 23, 1981, is stayed pending appeal.

(2) The request of Frank Fitzgerald for visitation of the youth pending appeal is denied at this time without prejudice.

(3) Any further applications for visitation of the youth shall be filed with the

District Court who shall retain jurisdiction to decide the same pending appeal.

DATED this 13th day of May, 1982.

For the Court

(Sig) Haswell, Chief Justice
Filed May 13 1982
Clerk of Supreme Court
State of Montana

APPENDIX F (Typed Copy)
(Cause refers to 81-523 and DJ-79-188)

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. 83-120

STATE OF MONTANA, ex rel.
HAROLD HANSER, County Attorney
Yellowstone County, Montana,
Petitioner,

v.

THE DISTRICT COURT OF THE
13TH JUDICIAL DISTRICT
In and For the County of
Yellowstone, THE HONABLE
WILLIAM J. SPEARE, and THE
HONABLE CHARLES LUEDKE,
District Judges, and HARDIN
TODD, Clerk of the District
Court, 13th Judicial District,
Defendants.

ORDER

PER CURIAM:

The petition for writ of review or other such appropriate writ, or in the alternative, the petitioner's motion for suspension of appellate rules of civil procedure and petition for rehearing is denied.

The Clerk of the Supreme Court is directed to mail a true copy hereof to counsel of record for all parties.

DATED this 28th day of April, 1983.

(Sig) Haswell, Chief Justice
Justices Harrison, Shea, Morrison, Weber, Sheehy, Gulbrandon, concurring
Filed APR 28 1983
Ethel M. Harrison, Clerk of Supreme Court
State of Montana

APPENDIX G (Typed Copy of Notorized Statement)

20 September 1987

To Whom It May Concern,

This statement concerns Margaret Geraldine Moore, as known to me when we, Jim & Rhoda Phillips, became her foster parents, 10 April 1979 at 12 Riley Drive, Billings, Mt. 59101.

When Margaret first came to live with us, she related well to Rhonda, my daughter, & I, but it took her a couple of weeks to relate well with Jim. We contributed this to the fact that she had not had a male influence in her home. She missed her mother and Velma very much, and would talk about things they had done. She missed her 2 dogs & had many tales tell of their fun. She also talked of her good friends Timmy, Rose & Bob. She was very expressive, & she had her own opinions in which she expressed freely. She also expressed herself through her drawings,

poetry and by putting on little skits for us. She was a beautiful, sweet, unspoiled child, who loved people & enjoyed doing things with them & for them. She was very loyal & protective of her loved ones. She was a very brilliant child. When they tested her I.Q. in 1980, she test 2 or 3 years above her age.

Rhonda taught Margaret sign language, and on Mother's Day 1981, Rhonda played the piano, Margaret signed as they sang "The Rose". It was beautiful.

Margaret enjoyed helping prepare meals. Her specialty was tuna fish sandwiches. The first time she baked cookies, she was upset because they were eaten so quickly. I told her, she should be happy because if they weren't good no one would have eaten them. That made her happy. She always wanted to help fix meals. She would peel potatoes, not fast, but she'd get it done. She liked to clean, dust & vacuum. She'd say "Can I vacuum?", I'd say "If you want

to." And although the vacuum was almost as big as she was, away she'd go.

She loved to clean & dust. She always make her bed & was neat & tidy with her personal things.

I loved her as my daughter & it was a deep hurt to me when they took her away the 17 October 1981. She is still deeply imbedded in my heart.

My husband, (ex husband now) Jim is an alcoholic. We had some very traumatic times.

After two of our little foster daughters were adopted at Christmas 1980, Jim seemed to get worse. He was very mean, verbally, sarcastic, & insinuative. He would make nasty remarks such as, "Which one are you going to Fu-- this time?" refering to Rhonda, my daughter, Margaret, my foster daughter & Kevin, my foster son. These type of questions were made in the presence of the children many times.

He, Jim, mentally abused us all, but

mostly me. I felt as long as he was harassing me, he was not bothering the children. I feel now that I was sicker than he was. I was depressed to the point of suicide. I hid in closets or any place where I could get away from him for just a short time. He would follow me everywhere, even to the bathroom, & talk, talk, talk. He was like a broken record. I would know what he was going to say before he'd say it. It seems my mind was in a constant turmoil. He had followed me around like this for days it seemed, I'm not sure how long, but not less than 3 days, maybe more. Home life was Hell, full of tention & fear. I was afraid to talk to the kids or they to me, because a simple thing such as "How many eggs do you want?", would set Jim off on one of his verbal tirades.

One day, while he was cleaning his shot gun at the kitchen table as I was doing dishes, he seemed more sobber than usual, I suggested he commit himself for treat-

ment. Of course he said there was nothing wrong with him & he could quit drinking anytime he wanted to. I said that if he didn't commit himself then I would see if I could get him committed. He jumped up & stuck the gun against my stomache & said, "If you try I'll blow your guts out.", & pulled the trigger. It wasn't loaded, but it terrified me so much that I hit him along side the head with a fry pan I had in my hand. He looked surprised & said, "Why did you hit me?" in a voice of confusion. I told him why, but he wouldn't believe me. It was another talk all day, day. By the time the children arrived home from school, I was in my usual state of insanity. I was always glad to see them come home, because Rhonda could sometimes draw him away from me, but this day, no way. The only time he'd leave me alone was when he'd go out to the barn for another drink.

After our evening meal we went out to

clean the yard & he just followed me around talking. I hated the sound of his voice. I just wanted to stop it any way I could. I told him to leave me alone for awhile. He'd say whats the matter with you. I tried to get away from him, but he'd just follow me every where. Rhonda & Kevin tried to get Jim to help them, he yelled at Kevin & shoved Rhonda, this was the first physical violent act I'd seen toward Kevin & toward myself but not toward Rhonda. When he shoved Rhonda & started talking to me again, I was so angry & full of hate I took the pushbroom I was sweeping the walk with & hit him on the shoulder & side of the face & head. It knocked him down, I ran into the house, grabbed the wall phone & was going to call the police to come & get Jim, I couldn't take any more. Jim came in, put his hand on the cradle-I hit him on the left cheek with the hand piece as hard as I could & ran upstairs. I started to dial the desk

phone. He came up & pushed the button down. I beat his hand several times with the handpiece, he just smiled & said "What is the matter with you, are you crasy?" I guess I was. I ran to Kevins bedroom, got his 22 rifle, levered a shell into the chamber at stood in the door waiting. The kids-all 3-had come upstairs & were talking to Jim. Then the kids and Jim started toward me. I said, "If you come any closer I'll kill you." The kids stopped & said "Don't mom," they kept talking, but I didn't listen. Jim said "Go ahead, I don't care." I pulled the trigger, but I aimed it just above his head, I couldn't kill him after all. Kevin & Jim took the gun from me. Then crying I ran outside. It was dark by then, I hid in some bushes before the came out looking for me. I then smeaked away at went about 3 blocks to an AA helper, but he wouldn't help me. I returned home because I was afraid of what Jim might do to the kids.

I wasn't allowed to go anywhere alone. I had to take someone with me at all times.

Jim got a ranch job about 3 miles out of Fromberg. He promised he'd change. So we moved there in April 1981. While in the process of packing, Jim got angry with Rhonda, threw her on the floor & threatened to bash her face in. I hit him with a regular broom I was sweeping the floor with.

After we'd moved to Fromberg he became more physically & mentally abusive. One day Margaret had fallen in the gravel & some of the gravel was imbedded in her knee. Rhonda was cleaning Margarets knee in the bathroom. Jim went in. He laughed at Margaret, called her a bawl baby, because she was crying, then slapped her on the knee. Rhonda told Jim to leave Margaret alone & tried to push him out of the bathroom. Margaret ran out & took off running down the road crying. Kevin caught up with her, we drove down, got her, returned

to the house & I finished taking care of her knee. Then Jim became threatening & nasty. I told the kids quietly to go get in the car & to take a change of clothes. I kept Jim busy while they did this. Then I ran, jumped in the car & took off. We went to Fromberg with Jim following in his pickup. I tried to find the Sheriff, couldn't find him so we headed for Bridger, 16 miles away. Jim was trying to run into the back of us. He looked wild - his hair flying, laughing, even taking his hands off the steering wheel & wave them. We were going from 70 to 90 miles per hour. At one time I slowed for a curve, Jim drove up beside us & tried to push us off the road. I slammed on my brakes to keep him from hitting us. Then he wouldn't let up pass. We caught up with another car. We got past Jim & other car & let the other car follow us into Bridger, about 2 miles. Kevin got out & called the HPD. When the Highway Patrolman showed, we ex-

plained to him the situation. He stalled Jim & we four went to Red Lodge - letting loose all our fears, tentions & anxieties. Rhonda & Margaret had bad dreams about that for quite sometime.

There were so many things everyday until we, the children & I, on the pretense of going to an Alanon & Alateen meeting, were able to get away and go to my Folks in Jordan, Mt. With the help of Peggy Smith & Mary Honaker, Jim committed himself for treatment at Galen, Mt. The Drs. told me that they figured a large percentage of the time, Jim was doing these things he was in black out periods.

Jim never lived at our house again. He came for visits a few times. He came up drunk one night, began being abusive. I sent Margaret to the neighbors. Rhonda & Kevin kept out of his way. I called the police department. They locked him up in jail overnight. He never came back.

After Jim left for Galen, the kids & I

moved to Bridger, Mt. 2 May 1981.

In Conclution:

Margaret was a sweet an impressionable child. She would do anything to please those around her even if she did not always agree. She was loyal to those she lived with & loved ones. Even though she feared Jim she work her little heart out to please him or wait on him when he'd ask for a drink, bring me this or that. She was very loyal to Rhonda, Kevin & I. We were her family. If we felt sad, Margaret seemed to be the first to realize it & be there with a hug & a comforting word. Margaret had some good experiences and bad experiences while living with us. They could have had various effects on her as she grew older.

Notary Seal. (Sig) Rhoda Phillips
Subscribed & sworn this 21st day of Sept. 1987. N. Carol Watson, NOTARY PUBLIC for the State of Montana, Residing at Jordan, Montana. My Commission Expires Feb. 10, 1988

Rhoda Phillips, Box 96, Jordan, Mt. 59337
Phone 557-2393